

REMARKS

Applicants have reviewed the Office Action of October 14, 2008. Claims 1, 2, 4, 5, 11, 14-16, 18-22, 25, 26, 30, 33, and 34 are pending. Reconsideration is requested.

Claims 1, 2, 4, 5, 11, 14-16, 18, and 19 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Krochta '164 (U.S. Patent No. 5,543,164) in view of Mangino (1984 *J. Dairy Science* 67:2711-2722). Applicants traverse the rejection.

According to the Examiner, Krochta '164 does not teach from about 2 to about 4 free sulphydryl (i.e. thiol) groups. However, Mangino discloses that free thiol groups have an effect on gel strength. It therefore would have been obvious to prepare a whey protein-based film by chemical or enzymatic treatment, as disclosed by Krochta '164, and to adjust the number of free thiol groups to create a film that has optimum strength and/or elasticity as disclosed by Mangino. The Examiner cited *In re Aller* and *In re Peterson*.

Applicants submit that this combination of references does not make the teaching the Examiner cites it for. In particular, the Examiner cited pg. 2716 for the disclosure that free thiol groups affect the gel strength of a whey protein gel. However, please note that Mangino and his source, Schmidt, discuss whey protein gel as being formed by heat, not by chemical or enzymatic treatment. Put another way, they teach away from using chemical or enzymatic treatment to form the whey protein-based film.

Applicants also submit that the cited references do not disclose the "general conditions of a claim" or disclose a "set of percentage ranges" for the Examiner's rationale of optimization to apply. Neither Krochta '164 nor Mangino disclose, for example, a concentration range of free thiol groups within which to optimize.

In addition, the cited references do not provide a method for increasing the number of free thiol groups. Thus, there appears to be no reasonable expectation of success in the combination of references.

Applicants request withdrawal of the § 103(a) rejection.

Claims 20-22, 25, and 26 were rejected under 35 U.S.C. 103(a) as allegedly being obvious over Kroccta '164 (U.S. Patent No. 5,543,164) in view of Mangino and Shimada 1988 (1988 *J. Agric Food Chem* 36(5):1018-1025). Applicants traverse the rejection.

Independent claim 20 was previously distinguished on the basis that it required the use of sulfite ion forming agent at a pH of 7 or below. The Examiner stated that Shimada 1988 is believed to provide the motivation to use this pH. According to the Examiner, Shimada 1988 discloses the effect of pH on the gel texture.

In response, Applicants note that Shimada 1988 also uses heat treatment to form the gel. As a result, the effect of pH disclosed by Shimada 1988 is not reasonably correlated to the pH of the chemical treatment. As Kroccta '164 and Mangino also teach away from using chemical treatment, Applicants submit the present claims are not obvious.

Applicants request withdrawal of the § 103(a) rejection.

CONCLUSION

For at least the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 1, 2, 4, 5, 11, 14-16, 18-22, 25, 26, 30, 33, and 34) are now in condition for allowance.

In the event the Examiner considers personal contact advantageous to the disposition of this case, the Examiner is hereby authorized to call Jay F. Moldovanyi, at telephone number 216-861-5582, Cleveland, OH.

Respectfully submitted,

FAY SHARPE LLP

4/6/09
Date

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